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TO AMEMBASSY TUNIS IMMEDIATE

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E.O. 11652: NA

TAGS: TS, OSCI

SUBJECT: SUIT OF HEDIA BACCAR
PASS MENEZ MMSC, FROM SMITHSONIAN

1. DEPARTMENT OF JUSTICE HAS REVIEWED DOCUMENTS RELEVANT TO BACCAR'S SUIT AND HAS CONFERRED WITH SMITHSONIAN ASSISTANT GENERAL COUNSEL ROBINSON AND DR. HIGGINS.
2. IN VIEW OF IMPENDING HEARING ON FEBRUARY 25, JUSTICE DEPARTMENT FAVORS CONTINUED RETENTION OF LEGAL SERVICES OF ATTORNEY AMOR DAKHLAOUI FOR DEFENSE OF SITUATION ON THE MERITS.
3. JUSTICE DEPARTMENT OF VIEW THAT NO DEFENSES CHALLENGING JURISDICTION OF LABOR TRIBUNAL AVAILABLE IN THIS CASE. HOWEVER, JUSTICE DEPARTMENT CONCURS WITH INFORMAL ADVICE OF TUNISIAN COUNSEL THAT BACCAR'S SUIT FRIVOLOUS AND THAT DEFENSES ON THE MERITS SOLID.

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4. PRIOR TO FORMAL RETENTION OF SERVICES OF LOCAL COUNSEL, ESSENTIAL THAT MMSC REACH A FIRM UNDERSTANDING WITH LOCAL COUNSEL CONCERNING HIS FEES AND EXPENSES. JUSTICE DEPARTMENT OF VIEW THAT FEE SHOULD NOT EXCEED USDOLS 1,500. IF UNDERSTANDING REACHED, YOU HAVE AUTHORITY TO HIRE COUNSEL. FYI.

5. ON THE MERITS, LOCAL COUNSEL SHOULD REPRESENT TO COURT ESSENTIALS AS FOLLOWS: A. THAT BACCAR WAS HIRED BY MMSC IN IMPLEMENTATION OF EXECUTIVE AGREEMENT ENTERED INTO BETWEEN U.S. AND GOT (GOVERNMENT OF TUNIS) ON SEPTEMBER 26, 1966, FOR PURPOSES OF CONDUCTING OCEANOGRAPHIC RESEARCH OFF COAST OF TUNISIA. BACCAR KNEW THAT, DUE TO LIMITATIONS IMPOSED BY U.S. LAW ON FUNDING OF PROJECT, HER EMPLOYMENT WOULD BE FOR A PERIOD OF ONE YEAR. B. BACCAR'S EMPLOYMENT WAS SUCCESSIVELY EXTENDED FOR ONE YEAR PERIOD, DEPENDING ON U.S. FUNDING AVAILABLE TO SMITHSONIAN. C. BACCAR'S RIGHTS, DUTIES, AND OBLIGATIONS UNDER EMPLOYMENT CONTRACT ARE SPELLED OUT IN DETAIL IN CONTRACT DOCUMENT AMONG OTHERS. BACCAR UNDERSTOOD AND AGREED THAT HER CONTRACT OF EMPLOYMENT COULD BE "TERMINATED BY EITHER PARTY IN WRITING UPON 30 DAYS NOTICE" (CONTRACT PARAGRAPH 7). THAT PURSUANT TO THAT PROVISION, WRITTEN NOTICE WAS GIVEN TO BACCAR BY MEMO JUNE 28, 1974, THAT HER EMPLOYMENT WOULD BE TERMINATED EFFECTIVE DECEMBER 31, 1974, AND HER EMPLOYMENT CONTRACT WAS SO TERMINATED ON THAT DAY. D. EVEN THOUGH CONTRACT EXPRESSLY PROVIDED FOR NO SEVERANCE PAYMENTS, MMSC VOLUNTARILY AND WITHOUT OBLIGATION PAID HER AN AMOUNT OF DINARS (FIGURE KNOWN TO MENEZ) UPON TERMINATION OF HER EMPLOYMENT, CONSTITUTING IN EFFECT SEVERANCE PAYMENT ON THE BASIS OF (FIGURE KNOWN TO MENEZ) YEARS OF EMPLOYMENT. E. BACCAR'S ALLEGATION THAT TERMINATION DID NOT COMPORT WITH JANUARY, 1972, AGREEMENT DID NOT AMEND THE INDIVIDUAL EMPLOYMENT CONTRACT ENTERED INTO BETWEEN MMSC AND BACCAR. MOREOVER, JANUARY, 1972, AGREEMENT SOLELY PROVIDES THAT "TUNISIAN CO-DIRECTOR WILL ALSO PARTICIPATE IN THE SELECTION OF TUNISIAN AND OTHER MMSC PERSONNEL..." AGREEMENT DID NOT PROVIDE AND CANNOT BE REASONABLY INTERPRETED TO PROVIDE THAT AFTER JANUARY, 1972, TUNISIAN CO-DIRECTOR WOULD HAVE VOICE IN TERMINATION, REPEAT, TERMINATION OF EXISTING EMPLOYMENT CONTRACT. LIMITED OFFICIAL USE

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F. BACCAR'S ALLEGATIONS OF "MORAL PREJUDICE" CAUSED TO HER AS A RESULT OF TERMINATION OF HER EMPLOYMENT CONTRACT SHOULD BE DENIED IN ALL RESPECTS.

6. SMITHSONIAN CONSIDERS IT ADVISABLE THAT ASSISTANT GENERAL COUNSEL ROBINSON PROCEED IMMEDIATELY TO TUNIS, AND IS ATTEMPTING CONSULT EMBASSY BY TELEPHONE ON PROPOSED

VISIT. UNLESS OBJECTION PERCEIVED, HE PLANS TO DEPART
FEBRUARY 22. MENEZ PLEASE ADVISE LOCAL COUNSEL THAT
ROBINSON WISHES TO MEET WITH HIM SHORTLY AFTER ARRIVAL.

7. HIGGINS AND ROBINSON ARRIVING TUNIS FEBRUARY 23
ALITALIA 864 AT 1750 HOURS. KISSINGER

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